

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

DAVID O. OWINO, KENDRA L.	)	
BURDEAU, KEVIN KAI JUNG	)	
CHAN, ANGELINE D.	)	
SERUSHYANA-BETTIS, and	)	
OLAKUNLE A. LAWRENCE,	)	Case No.: 1:12-cv-1041
individually,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
INTERNATIONAL BUSINESS	)	
MACHINES CORPORATION,	)	
	)	
and	)	
	)	
EXPERIS US, INC., <i>as joint employers</i>	)	
	)	
Defendants.	)	

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**AMENDED MEMORANDUM OF LAW IN SUPPORT OF THE JOINT  
AMENDED MOTION FOR APPROVAL OF SETTLEMENT AGREEMENTS**

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**INTRODUCTION**

The Parties are pleased to report that they have negotiated a settlement of this lawsuit asserting claims for unpaid overtime under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq* (the “FLSA”). The Plaintiffs and Experis jointly and respectfully seek this Court’s approval of their negotiated settlement agreements and dismissal of this case with prejudice.<sup>1</sup>

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<sup>1</sup> IBM does not oppose the relief sought.

## **GOVERNING LEGAL STANDARD**

Courts have held that settlements of FLSA actions such as this one require court approval. *Lynn's Food Stores, Inc. v. U.S.*, 679 F.2d 1350, 1353 (11th Cir. 1982). Approval should be granted when (1) the FLSA settlement is reached as a result of contested litigation; (2) a *bona fide* dispute exists between the parties; and (3) the settlement is fair and reasonable. *Lynn Food Stores*, 679 F.2d at 1355. The Parties' negotiated settlement here meets all three requirements.

## **ANALYSIS**

### **A. The Parties' Negotiated Settlement Was Reached After Contested Litigation**

The Parties obviously meet this requirement. *Lynn Food Stores, Inc.*, 679 F.2d at 1354 (a suit is "contested" when it is brought by an employee against a former employer).

### **B. A *Bona Fide* Dispute Existed Between the Parties**

Two main *bona fide* disputes exist between the Plaintiffs and Defendants. First, Plaintiffs assert a "misclassification" claim alleging that they were wrongfully classified as exempt from overtime pay in their positions as Immigration Case Managers. Defendants deny that Plaintiffs were misclassified, and defended this claim largely on the basis that they exercised independent judgment and discretion as Immigration Case Managers. There was therefore a *bona fide* dispute between the Parties about Plaintiffs' job duties and responsibilities and, thus, Defendants' liability.

Second, there was a *bona fide* dispute about the number of overtime hours Plaintiffs allegedly worked. Plaintiffs alleged that they worked significant amounts of

overtime hours, which Defendants disputed. Thus, even if Plaintiffs had prevailed on liability, there was a significant and substantial *bona fide* dispute about Plaintiff's alleged damages.

### **C. The Settlement Is Fair And Reasonable**

Courts consider an FLSA settlement fair and reasonable when the parties are represented by counsel, the attorneys engage in arm's length negotiations in the context of litigation, and the parties reasonably compromise in the settlement. *Lynn Food Stores, Inc.*, 679 F.2d at 1354. As with all other cases, public policy favors the voluntary settlement of FLSA cases. *Id.* ("we allow the district court to approve the settlement in order to promote the policy of encouraging settlement of litigation"); *In re Dollar Gen. Stores FLSA Litig.*, No. 5:09-MD-15, 2011 U.S. Dist. LEXIS 98162, at \*9 (E.D.N.C. Aug. 22, 2011) (internal citations omitted) ("[t]here is a presumption in favor of approving a settlement as fair").

The settlement here easily meets this standard. Counsel for the parties agreed to participate in a private mediation, and exchanged settlement demands and offers before the mediation. The parties mediated on April 24, 2013 with Kenneth Carlson of Constangy, Brooks & Smith, LLP, an experienced and respected mediator who is part of this Court's approved mediator list. The mediation lasted more than ten hours. During mediation, all parties substantially compromised from their initial settlement positions. Counsel have agreed upon all monetary and non-monetary settlement terms, as demonstrated by the written settlement agreements attached as Exhibit A.

In short, the negotiated settlement reflects the risks each party would have borne at trial – though each party believed it would prevail, neither party was assured a victory and, thus, a reasonable compromise required both parties to substantially compromise. *Patterson v. Richmond Sch. of Health and Tech., Inc.*, No. 3:10-CV-368, 2010 U.S. Dist. LEXIS 124965, at \*1 (E.D. Va. 4 Nov. 2010) (“[W]hen a proposed settlement reflects a reasonable compromise over bona fide disputes, then court approval promotes the policy of encouraging settlement while protecting an employee's rights under FLSA.”).

### **CONCLUSION**

For all the reasons explained above, the Plaintiffs and Experis respectfully request that this Court approve their negotiated settlement and dismiss this case with prejudice. The Stipulation of Dismissal is attached to this brief as Exhibit B.

Respectfully submitted this 18th day of June, 2013.

**DAVID O. OWINO, KENDRA L.  
BURDEAU, KEVIN KAI JUNG CHAN,  
ANGELINE D. SERUSHYANA-BETTIS,  
and OLAKUNLE A. LAWRENCE**

**EXPERIS US, INC.**

/s/ Yolanda W. Brock  
One of Their Attorneys

/s/ Brian E. Spang  
One of its Attorneys

Aaron J. Longo, N.C. Bar No. 33462  
McGuireWoods LLP  
201 N. Tryon St., Suite 3000  
Charlotte, North Carolina 28202  
Phone: (704) 373-8958  
Fax: (704) 353-6169  
alongo@mcguirewoods.com

Brian E. Spang  
(*Special Appearance Filed*)

Illinois Bar No. 6243937  
McGuireWoodsLLP  
77 West Wacker Drive, Suite 4100  
Chicago, IL 60601  
Phone: (312) 849-8100  
Fax: (312) 849-3690  
bspang@mcguirewoods.com

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Plaintiff,	)	
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INTERNATIONAL BUSINESS	)	
MACHINES CORPORATION,	)	
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and	)	
	)	
EXPERIS US, INC., <i>as joint employers</i>	)	
	)	
Defendants.		

**CERTIFICATE OF SERVICE**

I hereby certify that on June 18, 2013 a true and correct copy of the foregoing *Amended Memorandum of Law in Support of the Joint Amended Motion for Approval Settlement Agreements* was served electronically via the ECF system upon the following counsel:

Yolanda W. Brock, Esq.  
The Law Offices of Java O. Warren  
4919 Albemarle Rd., Ste. 106  
Charlotte, NC 28205

E-mail: [ybrock@lawofficesofjavaowarren.com](mailto:ybrock@lawofficesofjavaowarren.com)

Kevin Scott Joyner  
Ogletree Deakins Nash Smoak & Stewart, P.C.  
P.O. Box 31608  
Raleigh, NC 27622  
Email: [kevin.joyner@ogletreedeakins.com](mailto:kevin.joyner@ogletreedeakins.com)

Matthew W. Lampe  
Jones Day  
222 E. 41<sup>st</sup> St.  
New York, NY 10017  
Email: [mwlampe@jonesday.com](mailto:mwlampe@jonesday.com)

Kristina A. Yost  
Jones Day  
222 E. 41<sup>st</sup> St.  
New York, NY 10017  
Email: [kyost@jonesday.com](mailto:kyost@jonesday.com)

Java O. Warren  
The Law Office of Java O. Warren  
4919 Albermarle Rd., Suite 106  
Charlotte, NC 28205  
Email: [warr2131@bellsouth.net](mailto:warr2131@bellsouth.net)

By: /s/ Brian E. Spang  
Brian E. Spang  
(*Special Appearance Filed*)  
Illinois Bar No. 6243937  
[bspang@mcguirewoods.com](mailto:bspang@mcguirewoods.com)  
MCGUIREWOODS LLP  
77 W. Wacker Drive, Ste. 4100  
Chicago, IL 60601-1818  
Telephone: (312) 750-3532  
Facsimile: (312) 698-4562